



STATE TAX COMMISSION OF MISSOURI

DAVID ANDERSON,)
)
Complainant(s),) Appeal No. 21-10032
) Parcel No. 23O610121
v.)
)
JAKE ZIMMERMAN, ASSESSOR,)
ST. LOUIS COUNTY, MISSOURI,)
)
Respondent.)

ORDER OF THE COMMISSION DENYING APPLICATION FOR REVIEW

HOLDING

On December 16, 2022, Senior Hearing Officer Benjamin Slawson (Hearing Officer) entered a Decision and Order (Decision) affirming the decision of the Board of Equalization of St. Louis County (BOE). David Anderson (Complainant) subsequently filed an Application for Review of the Decision and Order of the Hearing Officer.

A party subject to a Decision and Order of a hearing officer of the STC may file an application requesting the case be reviewed by the Commission. Section 138.432¹. The Commission may summarily allow or deny the request. Section 138.432. If an application

¹ All statutory citations are to RSMo. 2000, as amended, unless indicated otherwise.

for review is denied, the Decision and Order of the hearing officer shall be deemed to be the final decision of the Commission for the purpose of judicial review. Section 138.432.

Commission's Ruling

The Application for Review is DENIED. The Decision and Order of the Hearing Officer, including the findings of fact and conclusions of law therein, is incorporated by reference, as if set out in full, as the final decision of the Commission.

Judicial review of the Decision and Order may be had in the manner provided in Section 138.432 and Sections 536.100 to 536.140 within 30 days of the mailing date set forth in the Certificate of Service for this Order. The Collector of St. Louis County, as well as the collectors of all affected political subdivisions therein, shall continue to hold the disputed taxes associated with this appeal pending the possible filing of a petition for judicial review, unless said taxes have been disbursed pursuant to a court order under the provisions of section 139.031. If no judicial review is made within 30 days, the Decision and Order is deemed final and the Collector of St. Louis County, as well as the collectors of all affected political subdivisions therein, shall disburse the protested taxes in accord with the Decision and Order.

SO ORDERED January 24, 2023.

STATE TAX COMMISSION OF MISSOURI

Gary Romine, Chairman

Victor Callahan, Commissioner

Debbi McGinnis, Commissioner

Certificate of Service

I hereby certify that a copy of the foregoing has been electronically mailed and/or sent by U.S. Mail on January 24, 2023, to: Complainant(s) and/or Counsel for Complainant(s), the County Assessor and/or Counsel for Respondent and County Collector.

Amy S. Westermann
Chief Counsel



STATE TAX COMMISSION OF MISSOURI

DAVID ANDERSON,)
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Complainant(s),)
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ST. LOUIS COUNTY, MISSOURI,)
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Respondent.)

DECISION AND ORDER

David Anderson (Complainant) appealed the St. Louis County Board of Equalization's (BOE) decision finding the true value in money (TVM) of the subject property on January 1, 2021, was \$461,800. Complainant alleges overvaluation and discrimination and proposes that the TVM of the subject as of that date was \$333,000.² The BOE decision is affirmed. The TVM of the subject property on January 1, 2021, was \$461,800.

The evidentiary hearing was held on May 26, 2022, via Webex. Complainant, appeared *pro se*. Respondent was represented by counsel Tim Bowe. The appeal was

² Complainant timely filed a complaint for review of assessment. The State Tax Commission (STC) has authority to hear and decide Complainant's appeal. Mo. Const. art. X, sec. 14; Section 138.430.1, RSMo 2000. All statutory citations are to RSMo 2000, as amended.

heard and decided by Senior Hearing Officer Benjamin Slawson.

FINDINGS OF FACT

1. **The Subject Property.** The subject residential real property is located at 521 Taylor Young Drive, Kirkwood, Missouri. The subject property consists of a two-bedroom bungalow home consisting of about 1,800 or 1,900 square feet of living space. Complainant stated that the basement is not fully finished because it has concrete floors and no floor covering (Comp. Exhibit 3). Complainant testified that the home sits on a lot that is a little less than an acre. Complainant also testified that the home is unique as it is ADA (Americans with Disabilities Act) compliant. Complainant purchased the lot in 2007, demolished the existing 1953 structure, and built the current home in 2008-2009. The current home has a similar floor plan to the original structure with the addition of a two-car garage. Complainant did add a retaining wall in the rear of the house (Comp. Ex. 4) within the last five years, but otherwise has not made any other improvements to the home. Complainant last had the property appraised around 2013 for mortgage purposes.

2. **Assessment and Valuation.** Respondent determined the TVM of the subject property as of January 1, 2021, was \$461,800. The BOE independently determined the TVM of the subject property as of January 1, 2021, was \$461,800.

3. **Complainant's Evidence.** Complainant submitted the following exhibits, described below and all admitted without objection:

| Exhibit | Description |
|----------------|---|
| 1 | Ownership/Legal Information for Tax Year 2013 |

| | |
|----|---|
| 2 | Assessor's Comparable Sales for 859 Lockett Rd. |
| 3 | Photograph of basement floor of subject property |
| 4 | Photograph of exterior back retaining wall of subject property |
| 5 | Screenshots of St. Louis County's assessment pages for Parcel Nos. 23O610066, and 23O610055, and 23O620065. |
| 6 | Sale price information from Laura McCarthy Real Estate |
| 7 | Certificate of Need Application for Harmony Homes |
| 8 | BOE decision for subject property dated October 29, 2021 |
| 9 | Complaint for Review with State Tax Commission |
| 10 | Assessment Protest/Summary of Complainant's arguments |

Complainant's opinion of value for the subject as of January 1, 2021 is \$333,000. Complainant believes the subject property was overvalued by Respondent and that Respondent failed to inspect the property properly. First, Complainant testified that no inspection of the subject was done by Respondent despite receiving two notices (one on the front door and one via mail) that an inspection of his property had been performed. Complainant did witness an individual from the Assessor's Office (Tim S.) drop off the notice at his residence, and also admitted receiving a notice in the mail from Respondent regarding inspection. Complainant asserted that this was a violation of the law as assessment increases over 15% require an inspection by the County. Complainant noted that the subject was valued 32% higher in 2021 by Respondent.

Second, Complainant argued that despite Respondent declaring in 2013 that the subject property was unique (Comp. Exhibit 1), Respondent used comparables in its 2021 assessment. Complainant noted that his house only has two bedrooms, is ADA compliant, has a concrete floor in the basement and is not fully finished, and the grade of the land is considered less than desirable for building for many homes. These factors, Complainant asserted, greatly lower the value in the housing market. Complainant proposed that if you were to compare his unique property to others, 859 Lockett Rd. is a better comparable, a 1977 two-bedroom home (Comp. Exhibit 2). Complainant, citing to Comp. Exhibit 6, also noted that two-bedroom homes in Kirkwood sold for less in 2021 than Respondent's 2021 appraised value for the subject. In addition, Complainant opined that the ongoing construction of a commercial nursing home on the property adjacent to the subject will make many home buyers think twice before even considering an offer on the subject. According to Complainant, traffic, sound and light pollution, and perimeter barriers are just some of the issues that this planned commercial development will cause.

Complainant presented all these issues to the BOE. Complainant is not a licensed appraiser in the State of Missouri, nor does he have any professional training in that field.

4. **Respondent's Evidence.** Respondent introduced four Exhibits, described below and admitted into evidence. Complainant objected to Exhibit 4 because it did not represent the neighborhood as of January 1, 2021. The objection was overruled.

| Exhibit | Description |
|----------------|--|
| 1 | Board Decision letter dated October 29, 2021 |

| | |
|---|---|
| 2 | Property Record Card for the Subject Property |
| 3 | Market Analysis |
| 4 | Market Analysis Photos |

Respondent presented the testimony of Ms. Sharon Kuelker, a senior residential appraiser employed by Respondent for the last twenty years. Ms. Kuelker’s job duties include preparing appraisal reports and valuing residential property in St. Louis County for *ad valorem* tax purposes. Ms. Kuelker prepared Respondent’s Exhibits 3 and 4 which comprise a Market Analysis of residential real property in the subject’s neighborhood, Hue Vista Subdivision. Ms. Kuelker testified that Exhibit 3 contains information on sales in the neighborhood from January 1, 2018, through May of 2021 which was obtained from the MLS (Multi Listing Service) and St. Louis County’s internal records. Respondent’s Exhibit 4 contains pictures of the properties on Respondent’s Exhibit 3. Ms. Kuelker opined that based on her professional opinion and experience, the BOE value is supported when examining the market in the subject’s neighborhood. Looking at the sales in Exhibit 3, Ms. Kuelker determined an average price of \$477,711. Further, Ms. Kuelker noted a neighboring property of the subject, 511 Taylor Young Dr., sold for \$709,500 and also only has two bedrooms like the subject.

Ms. Kuelker further testified that St. Louis County records state that the subject property has 850 square feet of finished area in the subject’s basement.

5. Value. The TVM of the subject property as of January 1, 2021, was \$ \$461,800.

CONCLUSIONS OF LAW

1. Assessment, Valuation, and Discrimination. Residential real property is assessed at 19% of its TVM as of January 1 of each odd-numbered year. Section 137.115.5(1)(a). The TVM is "the fair market value of the property on the valuation date[.]" *Snider v. Casino Aztar/Aztar Mo. Gaming Corp.*, 156 S.W.3d 341, 346 (Mo. banc 2005) (internal quotation omitted). The fair market value is "the price which the property would bring from a willing buyer when offered for sale by a willing seller." *Mo. Baptist Children's Home v. State Tax Comm'n*, 867 S.W.2d 510, 512 (Mo. banc 1993). "True value in money is defined in terms of value in exchange not value in use." *Tibbs v. Poplar Bluff Assocs. I, L.P.*, 599 S.W.3d 1, 7 (Mo. App. S.D. 2020) (internal quotation omitted). "Determining the true value in money is an issue of fact for the STC." *Cohen v. Bushmeyer*, 251 S.W.3d 345, 348 (Mo. App. E.D. 2008).

"For purposes of levying property taxes, the value of real property is typically determined using one or more of three generally accepted approaches." *Snider*, 156 S.W.3d at 346. The three generally accepted approaches are the cost approach, the income approach, and the comparable sales approach. *Id.* at 346-48. The STC has wide discretion in selecting the appropriate valuation method but "cannot base its decision on opinion evidence that fails to consider information that should have been considered under a particular valuation approach." *Id.*, at 348.

The comparable sales approach "is most appropriate when there is an active market for the type of property at issue such that sufficient data are available to make a comparative analysis." *Snider*, 156 S.W.3d at 348. For this reason, the comparable sales approach is typically used to value residential property. "The comparable sales approach uses prices

paid for similar properties in arms-length transactions and adjusts those prices to account for differences between the properties.” *Id.* at 347-48 (internal quotation omitted). “Comparable sales consist of evidence of sales reasonably related in time and distance and involve land comparable in character.” *Id.* at 348.

To obtain a reduction in assessed value based upon discrimination, a complaining taxpayer must (1) prove the true value, also known as the fair market value (FMV), of the subject property as of the taxing date, and (2) show an intentional plan of discrimination by the assessor resulting in an assessment at a greater percentage of value than other property within the same class and the same taxing district, or, in the absence of such an intentional plan, show that the level of assessment is so grossly excessive as to be inconsistent with an honest exercise of judgment. *Zimmerman v. Mid-America Financial Corp.*, 481 S.W.3d 564, 571 (Mo. App. E.D. 2015), quoting *Savage v. State Tax Comm’n of Missouri*, 722 S.W.2d 72, 78 (Mo. banc 1986). Evidence of value and assessments of a few properties does not prove discrimination. Substantial evidence must show that all other property in the same class, generally, is actually undervalued. *State ex rel. Plantz v. State Tax Commission*, 384 S.W.2d 565, 568 (Mo. 1964). The difference in the assessment ratio of the subject property the average assessment ratio in the subject county must be shown to be grossly excessive. *Savage* at 79. No other methodology is sufficient to establish discrimination. *Cupples-Hesse, supra*.

2. Evidence. "Although technical rules of evidence are not controlling in administrative hearings, fundamental rules of evidence are applicable." *Mo. Church of Scientology v. State Tax Comm’n*, 560 S.W.2d 837, 839 (Mo. banc 1977). The hearing

officer is the finder of fact and determines the credibility and weight of the evidence. *Kelly v. Mo. Dep't of Soc. Servs., Family Support Div.*, 456 S.W.3d 107, 111 (Mo. App. W.D. 2015). "It is within the purview of the hearing officer to determine the method of valuation to be adopted in a given case." *Tibbs v. Poplar Bluff Assocs. I, L.P.*, 599 S.W.3d 1, 9 (Mo. App. S.D. 2020). The hearing officer "may inquire of the owner of the property or of any other party to the appeal regarding any matter or issue relevant to the valuation, subclassification or assessment of the property." Section 138.430.2. The Hearing Officer's decision regarding the assessment or valuation of the property may be based solely upon his inquiry and any evidence presented by the parties, or based solely upon evidence presented by the parties. *Id.*

3. Complainant's Burden of Proof. The taxpayer bears the burden of proof and must show by a preponderance of the evidence that the property was overvalued. *Westwood P'ship v. Gogarty*, 103 S.W.3d 152, 161 (Mo. App. E.D. 2003). The BOE's valuation is presumptively correct. *Tibbs*, 599 S.W.3d at 7. The "taxpayer may rebut this presumption by presenting substantial and persuasive evidence that the valuation is erroneous." *Id.* (internal quotation omitted). The taxpayer also must prove "the value that should have been placed on the property." *Id.*

"Substantial evidence is that evidence which, if true, has probative force upon the issues, and from which the trier of fact can reasonably decide the case on the fact issues." *Savage v. State Tax Comm'n*, 722 S.W.2d 72, 77 (Mo. banc 1986) (internal quotation omitted). Evidence is persuasive when it has "sufficient weight and probative value to convince the trier of fact." *Daly v. P.D. George Co.*, 77 S.W.3d 645, 651 (Mo. App. E.D.

2002); *see also White v. Dir. of Revenue*, 321 S.W.3d 298, 305 (Mo. banc 2010) (noting the burden of persuasion is the "party's duty to convince the fact-finder to view the facts in a way that favors that party").

4. Complainant Did Not Produce Substantial and Persuasive Evidence of Overvaluation.

Complainant did not produce substantial and persuasive evidence to support Complainant's \$333,000 opinion of value and claim of overvaluation. Complainant did not produce evidence supporting a comparable sales approach, income approach, or cost approach to value, nor did Complainant offer a recent appraisal of the subject property as evidence of the TVM of the property as of January 1, 2021.

Complainant testified concerning the unique characteristics of the subject property, which are also evidenced with pictures in Complainant's exhibits. However, Complainant did not provide evidence of the specific monetary impact that these issues or surrounding neighborhood conditions (such as the planned nursing home construction) have on the TVM of the subject property as of January 1, 2021. In other words, there is no documentation or testimony rebutting the presumption that the BOE examined this issue and figured it into its valuation at \$461,800.

The comparable sales approach is the usual method used to determine the TVM of residential real property. "The comparable sales approach uses prices paid for similar properties in arms-length transactions and adjusts those prices to account for differences between the properties." *Snider*, 156 S.W.3d at 347-48 (internal quotation omitted). Complainant took issue with the comparable sales used by Respondent in his

assessment. However, Complainant offers no evidence showing that Respondent did not make appropriate market-based adjustments for value considering the differing characteristics between these properties and the subject when determining the TVM of the subject as of January 1, 2021. Further, Complainant suggests that 859 Lockett Rd. is a better comparable than those used by Respondent. However, there is no evidence in the record, including Comp. Exhibit 2, which proves that 859 Lockett Rd. was sold recently and for what price. The comparable sales approach requires sales. Thus, Complainant's valuation is based on improper elements and therefore is speculative.

Although not required given the burden of proof, Respondent presented testimony of Ms. Sharon Kuelker that persuasively supports a valuation of the subject property of \$461,800. Ms. Kuelker is an appraiser and has 20 years of experience and training in residential appraisal of properties in St. Louis County. Ms. Kuelker performed a market analysis examining recent sales of properties in the subject's neighborhood. Identifying a range of values with an average of \$477,711, Ms. Kuelker persuasively testified that the BOE's valuation of the subject is appropriate given the sales data examined.

Even if Complainant had rebutted the presumption of correct valuation by the BOE, Complainant has not proven that the TVM of the subject property is \$333,000 as of January 1, 2021. While a property owner's opinion of value is generally admissible, the opinion "is without probative value where it is shown to have been based upon improper elements or an improper foundation." *Shelby Cty. R-IV Sch. Dist. v. Herman*, 392 S.W.2d 609, 613 (Mo. 1965); see also *Cohen v. Bushmeyer*, 251 S.W.3d 345, 349 (Mo. App. W.D. 2008) (noting a property owner's opinion of value loses probative value when it rests on an

improper foundation).

5. Section 137.115.10

Complainant argues that Respondent did not make a proper inspection of his property under Section 137.115.10. In pertinent part, Section 137.115.10 provides “[b]efore the assessor may increase the assessed valuation ... by more than fifteen percent ... the assessor shall conduct a physical inspection of such property.” (Emphasis added). In other words, the statute expressly conditions a valuation increase of more than 15 percent (“[b]efore the assessor may increase the assessed valuation ... by more than 15 percent”) on a mandatory physical inspection (“shall conduct a physical inspection”). Because a physical inspection is a condition precedent to a valuation increase in excess of 15 percent, an assessor is precluded from increasing an assessment by more than 15 percent without conducting the statutorily required physical inspection. It follows that the failure to conduct a sufficient physical inspection negates any increased valuation to the extent it exceeds 15 percent.³

The necessary elements of a Section 137.115.10 physical inspection are set forth in Section 137.115.11 and Section 137.115.12. In pertinent part, Section 137.115.11 requires the assessor to provide the property owner with “clear written notice” of the right to an

³ This conclusion is confirmed by considering the converse: if the failure to conduct a physical inspection does not negate a valuation increase in excess of fifteen percent, then the condition precedent to increasing the assessment by more than 15 percent – “[b]efore the assessor may increase the assessed valuation” – is rendered superfluous. *See Bateman v. Rinehart*, 391 S.W.3d 441, 446 (Mo. banc 2013) (courts “must presume every word, sentence or clause in a statute has effect, and the legislature did not insert superfluous language.”)

inspection. The inspection “shall include, but not be limited to, an on-site personal observation and review of all exterior portions of the land.” Section 137.115.12. “Mere observation of the property via a drive-by inspection or the like shall not be considered sufficient to constitute a physical inspection as required by this section.” *Id.*

The 2021 assessment of the subject property was increased by approximately 32% by Respondent from last assessment. However, the evidence submitted in this case does not show that Respondent violated Section 137.115.10 before increasing his assessment. First, Complainant admits that he received two notices of inspection from Respondent concerning the subject property. Complainant also admits that an individual from the Assessor’s Office (Tim S.) dropped off the notice at his residence as he witnessed this occur. Therefore, there is no evidence that this individual did a drive-by inspection.

6. Complainant Did Not Prove Discrimination.

Complainant did not prove discrimination for the subject property. Missouri courts have consistently held that (1) a taxpayer alleging discrimination must show the true value in money of his or her property as a necessary part of her discrimination claim; and (2) the proper method of determining discrimination is to compare the actual level of assessment of the subject property as determined by the assessor to the common level of assessment for the subject property’s subclass. *Mid-America Financial Corp.*, 481 S.W.3d at 574, citing *Savage*, 722 S.W.2d at 72.

Regarding the first point, Complainant did not rebut the correctness of the BOE’s valuation. As discussed above, Complainant did not present substantial and persuasive evidence rebutting the presumption of correctness of the BOE’s value and establishing that

her value was correct. Complainant did not present any recent comparable sales or a properly-authenticated appraisal report supported by the testimony of the appraiser who performed the appraisal to establish the TVM was lower than \$461,800. Therefore, Complainant failed to establish a market value which would point to discrimination.

Regarding the second point, Complainant presented no evidence of additional properties for comparison with the subject property in order to establish an intentional plan of discrimination by St. Louis County. There was no evidence presented that a statistically significant number of other residential properties within St. Louis County are being assessed at a lower ratio of market value than the subject property. In other words, Complainant presented no evidence of several properties which sold for prices in excess of their appraised value. He testified that the subject property was appraised higher than others based on his observations, but again presented no persuasive comparable sales in support of his testimony. Because the Complainant failed to establish the market value of the subject property and failed to establish that it is being assessed at a higher percentage of market value than a statistically significant number of other properties in St. Louis County, the claim of discrimination fails.

CONCLUSION AND ORDER

The BOE decision is set affirmed. The TVM of the subject property as of January 1, 2021, was \$461,800.

Application for Review

A party may file an application for review of this decision within 30 days of the mailing date set forth in the certificate of service for this decision. The application "shall

contain specific detailed grounds upon which it is claimed the decision is erroneous." Section 138.432. The application must be in writing, and may be mailed to the State Tax Commission of Missouri, P.O. Box 146, Jefferson City, MO 65102-0146, or emailed to Legal@stc.mo.gov. A copy of the application must be sent to each person listed below in the certificate of service. ***Failure to state specific facts or law upon which the application for review is based will result in summary denial.*** Section 138.432.

Disputed Taxes

The Collector of St. Louis County, and the collectors of all affected political subdivisions therein, shall continue to hold the disputed taxes pending the possible filing of an application for review, unless the disputed taxes have been disbursed pursuant to a court order under the provisions of section 139.031.

SO ORDERED December 16, 2022.

Benjamin C. Slawson
Senior Hearing Officer
State Tax Commission

Certificate of Service

I hereby certify that a copy of the foregoing has been electronically mailed and/or sent by U.S. Mail on December 16, 2022, to: Complainant(s) and/or Counsel for Complainant(s), the County Assessor and/or Counsel for Respondent and County Collector.

Amy S. Westermann
Chief Counsel